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FISCAL IMPACT STATEMENT

LS 7395

BILL NUMBER: HB 1633

NOTE PREPARED: Feb 25, 2009

BILL AMENDED: Feb 24, 2009

SUBJECT: Foreclosure of Residential Mortgages.

FIRST AUTHOR: Rep. Bardon

FIRST SPONSOR: Sen. Bray

BILL STATUS: As Passed House

FUNDS AFFECTED: X **GENERAL**
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) The bill provides that in the case of a residential mortgage transaction in which the debtor defaults after June 30, 2009, the creditor shall provide a presuit notice to the debtor that informs the debtor that the creditor intends to default and that the debtor may seek assistance from a mortgage foreclosure counselor. The bill specifies that if a creditor files an action to foreclose a mortgage in certain cases, the creditor must include with the complaint served on the debtor a notice that informs the debtor of the debtor's right to participate in a settlement conference.

The bill requires the debtor to contact the court not later than 30 days after the date of the notice if the debtor wishes to schedule a settlement conference. The bill prohibits a court from entering a judgment of foreclosure until: (1) 30 days after the creditor has provided notice of the availability of a settlement conference to the debtor if the debtor fails to contact the court within 30 days; (2) the conclusion of a settlement conference, if the parties are unable to reach an agreement; or (3) 60 days after the notice is sent if the property is vacant or certain other conditions apply. The bill provides that the debtor has the right to be represented by an attorney or a mortgage foreclosure counselor at the conference. The bill requires the creditor to ensure that any person representing the creditor at the conference or in any negotiations with the debtor has authority to bind the creditor. The bill upon the conclusion of a conference, requires the creditor to report to the Indiana Housing and Community Development Authority (IHCDA) on whether the parties were able to agree on the terms of a foreclosure prevention agreement.

The bill provides that after June 30, 2009, a creditor may not proceed to file a residential mortgage foreclosure action unless: (1) the creditor has given the required notice offering a conference to the debtor; (2) either the debtor did not respond to the creditor's notice not later than 30 days after the date of the notice, or the parties were unable to negotiate a mortgage prevention agreement after a conference is held; and (3)

at least 90 days have elapsed since the date of the creditor's notice. The bill provides that in a residential mortgage foreclosure action filed after June 30, 2009, the court may not enter a judgment of foreclosure until 60 days after the date the complaint is filed, in a case in which the debtor did not respond to the creditor's notice not later than 30 days after the date of the notice.

The bill provides that, upon petition by the creditor, the court may waive the 60 day period under certain circumstances. The bill provides that in the case of a residential mortgage foreclosure action that: (1) is pending on July 1, 2009; or (2) is filed after June 30, 2009; the court having jurisdiction of the action shall serve notice of a settlement conference on the parties to the action. The bill provides that the notice must set forth a date and time by which the parties must conduct a settlement conference. The bill provides that the date specified in the notice may not be earlier than 25 days after the date of the notice or later than 60 days after the date of the notice.

The bill provides that the notice must require: (1) the debtor to contact a mortgage foreclosure counselor before the settlement conference and bring to the settlement conference certain documents; and (2) the creditor to bring to the settlement conference a complete transaction history for the mortgage upon which the foreclosure action is based. The bill provides that each party has the right to be represented by an attorney or a mortgage foreclosure counselor at the settlement conference. The bill provides that the settlement conference must be held at the county courthouse at the date and time specified in the court's notice unless the parties agree to hold the settlement conference: (1) by telephone; or (2) in person at a location agreed to by the parties; at a time and date agreed to by the parties, but not later than the time and date specified in the notice.

The bill provides that any party may file: (1) objections to the settlement conference; or (2) a petition for the court to review a proposed foreclosure prevention agreement offered by the creditor to the debtor in connection with the conference held before the filing of the complaint; not later than 15 days after the date of the court's notice. The bill provides that after reviewing a proposed agreement offered by the creditor in connection with the previous conference, the court may order the parties to appear before the court for a hearing, instead of holding a settlement conference. The bill provides that the creditor shall ensure that any person representing the creditor at the settlement conference has the authority to bind the creditor.

The bill provides that if the parties agree to enter into a foreclosure prevention agreement as a result of the settlement conference, the creditor must report that fact to: (1) the court; and (2) the authority; not later than seven business days after the signing of the agreement. The bill provides that if, after conducting a settlement conference, the parties are unable to reach agreement on the terms of a foreclosure prevention agreement: (1) the creditor must report that fact to the court and the authority not later than seven business days after the date of the settlement conference; and (2) the foreclosure action filed by the creditor may proceed as allowed by law.

Effective Date: July 1, 2009.

Explanation of State Expenditures: (Revised) *IHCDA*- The IHCDA would have to prescribe a presuit and a settlement conference form for creditors to send to debtors facing foreclosure. The IHCDA should be able to accomplish this provision within their existing level of resources.

Explanation of State Revenues:

Explanation of Local Expenditures: *Summary:* *Courts*- The provision could slow filings of foreclosure

actions. However, once actions were allowed to be filed under the bill, courts could see an increase in their case backlog, if these provisions were to slow foreclosure proceedings.

Background- During 2007, trial courts had: 43,804 new filings, 42,600 cases disposed, and 23,331 cases pending on December 31, 2007, related to mortgage foreclosure.

Explanation of Local Revenues:

State Agencies Affected: IHCD.

Local Agencies Affected: Trial courts.

Information Sources: *2007 Indiana Judicial Service Report.*

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